

## § 1108.8

(h) An agreement to arbitrate pursuant to these rules will be deemed a contract to arbitrate, subject to limited review by the STB pursuant to § 1108.11(c), for the purpose of subjecting the arbitration award to the provisions of 9 U.S.C. 9 (court enforcement of an arbitration award), and 9 U.S.C. 10 (vacation of an arbitration award by a court on certain limited grounds).

### § 1108.8 Arbitration procedures.

(a) The Arbitrator will establish rules, including timetables, for each arbitration proceeding.

(1) The evidentiary process will be completed within 90 days from the start date established by the arbitrator, and the arbitrator's decision will be issued within 30 days from the close of the record. The parties may agree to vary these timetables, however, subject to the approval of the arbitrator. Matters handled through arbitration under these rules are exempted from any applicable statutory time limits, pursuant to 49 U.S.C. 10502.

(2) Discovery will be available only upon the agreement of the parties.

(b) Evidence will be submitted under oath. Evidence may be submitted in writing or orally, at the direction of the Arbitrator. Hearings for the purpose of cross-examining witnesses will be permitted at the sound discretion of the Arbitrator. The Arbitrator, at his/her discretion, may require additional evidence.

(c) Subject to alteration by the Arbitrator or by agreement of the parties in individual proceedings, as a general rule, where evidence is submitted in written form, the complaining party will proceed first, and the defendant will proceed next. The complainant will then be given an opportunity to submit a reply. At the discretion of the Arbitrator, argument may be submitted with each evidentiary filing or in the form of a brief after the submission of all evidence. Page limits will be set by each Arbitrator for all written submissions of other than an evidentiary nature.

(d) Any written document, such as a common carrier rate schedule, upon which a party relies should be submitted as part of that party's proof, in

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whole or in relevant part. The Arbitrator will not be bound by formal rules of evidence, but will avoid basing a decision entirely or largely on unreliable proof.

(e) Where proof submitted to an Arbitrator addresses railroad costs, such proof should be prepared in accordance with the standards employed by the STB in ascertaining the costs at issue. Discovery should be sufficient to enable parties to meet these standards.

(f) Where the Arbitrator is advised that any party to an arbitration proceeding wishes to keep matters relating to the arbitration confidential, the Arbitrator shall take such measures as are reasonably necessary to ensure that such matters are treated confidentially by the parties or their representatives and are not disclosed by the Arbitrator to non-authorized persons. If the Arbitrator regards any confidential submission as being essential to his/her written decision, such information may be considered in the decision, but the Arbitrator will make every effort to omit confidential information from his/her written decision.

### § 1108.9 Decisions.

(a) Decisions of the Arbitrator shall be in writing and shall contain findings of fact and conclusions. All such decisions shall be served by the Arbitrator by hand delivery or overnight mail on the parties. At the same time, the arbitrator shall notify the STB, in writing, that a decision has been rendered.

(b) By agreeing to arbitrate pursuant to these procedures, each party agrees that the decision and award of the Arbitrator shall be binding and judicially enforceable in law and equity in any court of appropriate jurisdiction, subject to a limited right of appeal to the STB as provided below.

### § 1108.10 Precedent.

Decisions rendered by arbitrators pursuant to these procedures shall have no precedential value.

### § 1108.11 Enforcement and appeals.

(a) An arbitration decision rendered pursuant to these procedures may be appealed to the STB within 20 days of service of such decision. Any such appeal shall be served by hand delivery or